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REMARKS

Favorable reconsideration and allowance of the claims of the present application are respectfully requested.

In the Office Action dated August 29, 2006, the Examiner has set forth a requirement for restriction under 35 U.S.C. §121, alleging that the subject matter defined by the claims of the present invention represents numerous and divergent variables in the compound of Formula (I) and can be divided, for example, into the following fourteen separate and distinct inventions:

Groups I-III, IX (a), VII, VIII are directed to formula (Ic) wherein A is CH_2-CH_2, L is a bond, and R_1 is hydrido, lower alkyl, perflurinated lower alkyl, CN or $COCF_3$ and more specifically:

I, II, III	Claims 1-12 (in part), drawn to a method of treating diseases comprising administering a compound of formula (Ic), wherein R_2 is phenylene ring, pyridazine ring, or pyridine ring respectively.
VII, VIII	Claims 13-22 & 27 (in part) drawn to products of formula (Ic), wherein R_2 phenylene ring or pyridine ring respectively.
IV, XI	Claims 1-12 (in part), drawn to a method of treating diseases comprising administering a compound of formula (Id), wherein A is CH_2-CH_2, B is imidazolyl, and r is 3.
X	Claims 1-12 (in part), Claims 13-22 & 27 (in part), drawn to products of formula (Id), wherein A is CH_2-CH_2, B is imidazolyl, and r is 3.
V	a) Claims 1-12 (in part), drawn to a method of treating diseases comprising administering a compound of formula (Ig), wherein A is CH_2-CH_2; r is 2, L is NH; and R_2 is phenyl; b) a compound of formula (Id) wherein A is CH_2-CH_2; r is 2, B is imidazolyl
VI	Claims 1-12 (in part), drawn to products of formula (I), containing compounds not encompassed in Groups I-V.

IX	a) Claims 13-22 & 27 (in part), drawn to product of formula (Ic), wherein R_2 pyridazine ring; b) Claims 13-22 & 27 (in part), drawn to product of formula (I), containing compounds not encompassed in Groups I-V.
XII	a) Claims 13-22 & 27 (in part), drawn to products of formula (Id), wherein A is CH_2-CH_2, B is imidazolyl, and r is 2; b) Claims 25-26 drawn to the compounds of formula (11), (12), and (13).
XIII	a) Claims 13-22 (in part), drawn to products of formula (Ig), wherein A is CH_2-CH_2; r is 2, L is NH, and R_2 is phenyl; b) Claims 28 & 30, drawn to products for the treatment of diseases.
XIV	Claims 29, drawn to a product or kit comprising a compound of claim 14 for use in anticancer therapy.

Applicants elect, with traverse, the subject matter of Group VI, Claims 1-12 (in part), drawn to products of (I), containing compounds not encompassed in Groups I-V.

Applicants hereby reserve their right to file a divisional application(s) directed to the non-elected subject matter in this application.

However, pursuant to 37 C.F.R. §§1.111 and 1.143, Applicants hereby traverse the Examiner's requirement for restriction and request reconsideration thereof for the following reasons.

Applicants respectfully request that the Restriction Requirement be withdrawn since it is not in compliance with 35 U.S.C. §121 and 37 C.F.R. §§1.141 and 1.142.

35 U.S.C. §121 provides that the Commissioner may restrict an application when two or more independent and distinct inventions are claimed in a single application (emphasis added). Similarly, 37 C.F.R. §1.141(a) permits restriction on condition that independent and distinct inventions are found within one application.

The United States Patent and Trademark Office has the burden of making a prima facie case that the subject matter is distinct and independent. The United States Patent and

Trademark Office has not met this burden; the PTO has not shown that the various groups are distinct or independent. For example, Groups V-VIII, IX, X, XII, and XIII are drawn to products of a formula and Groups I-V, and XI are drawn to a method of treating diseases comprising administering said products.

Thus, the Office Action has not shown that the claimed subject matter in the various groups is independent and distinct as required.

Moreover, applicants submit that there is an interdependence between each of the groups alleged to be patentably distinct.

> MPEP §802.01 defines independent as follows:
> The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect...

Applicants respectfully submit that the subject matter of Groups V-VIII, IX, X, XII, and XIII is drawn to a products, while the subject matter of Groups I-V, and XI, XIV is directed to methods of using such products. Thus, Groups I-XIV are interrelated and are not independent. Such Groups as defined by the Examiner, therefore, have a disclosed relationship. Moreover, applicants observe that, during a telephone conversation on October 23, 2006, the Examiner has agreed to consider the products of claims 13-22 and 27 in Group VI along with the method of using said products of claims 1-12.

In addition, the courts have recognized that it is in the public interest to permit applicants to claim several aspects of their invention together in one application, as the applicants have done herein, so as to encourage applicants to provide a more detailed disclosure of all aspects of their invention. The CCPA has observed:

> We believe the constitutional purpose of the patent system is promoted by encouraging applicants to claim, and therefore to

> describe in the manner required by 35 U.S.C. §112 all aspects as to what they regard as their invention, regardless of the number of statutory classes involved. In re Kuehl, 456 F.2d 658, 666, 117 U.S.P.Q. 250, 256 (CCPA 1973).

This interest is consistent with the practical reality that a sufficiently detailed disclosure supporting claims to one aspect of an invention customarily is sufficient to support claims in the same application to other aspects of the invention.

Applicants respectfully suggest that in view of the continued increase of official fees and the potential limitation of an applicant's financial resources, a practice which arbitrarily imposes restriction requirements may become prohibitive and thereby contravene the constitutional purpose to promote and encourage the progress of science and the useful arts.

It is vital to all applicants that restriction requirements issue only with the proper statutory authorization, because patents issuing on divisional applications which are filed to prosecute claims that the Examiner held to be independent and distinct can be vulnerable to legal challenges alleging double patenting. The third sentence of 35 U.S.C. §121, which states that a patent issuing on a parent application "shall not be used as a reference" against a divisional application or a patent issued thereon, does not provide comfort to applicants against such allegations. The Court of Appeals for the Federal Circuit has declined to hold that §121 protects a patentee from an allegation of same-invention double patenting, Studiengesellschaft Kohle mbH v. Northern Petrochemical Co., 784 F.2d 351, 355, 228 U.S.P.Q. 837, 840 (Fed. Cir. 1986); and in Gerber Garment Technology Inc. v. Lectra Systems Inc., 916 F.2d 683, 16 U.S.P.Q. 2d 1436 (Fed. Cir. 1990) that court held that §121 does not insulate a patentee from an allegation of "obviousness-type" double patenting, and in fact affirmed the invalidation on double patenting grounds of a patent that had issued from a divisional application filed following a restriction

requirement. Furthermore, it is far from clear that the step of filing a terminal disclaimer is available to resolve a double patenting issue that arises after the issuance of a patent on the divisional application.

All these considerations indicate that the imposition of a restriction requirement with inadequate authority can lead to situations in which an applicant's legitimate patent rights are exposed to uncertainty and even extinguished. Accordingly, to protect a patentee's rights and to serve the public's interest in the legitimacy of issued patents, applicant respectfully urges the Examiner not to require restriction in cases such as the present application wherein various aspects of a unitary invention are claimed.

In the Office Action, Applicants are required under 35 U.S.C. §121 to elect a single disclosed species allegedly for search purposes. Applicants hereby elect, with traverse, compounds of formula (Id) wherein B is a pyrazole ring, r is 3 and A is CH_2-$C(CH_3)_2$ as the single disclosed species. Applicants hereby reserve their right to have other species considered upon allowance of a generic claim.

In the Office Action, the Examiner objects to the claimed invention as allegedly lacking unity under 37 CFR §1.475(b).

Applicant respectfully submit that as stated at 37 C.F.R. §1.475(b), a national stage application containing claims of different categories of invention are considered to have unity of invention if the claims are drawn only to ... (3) a product, a process specially adapted for the manufacture of the said product, and a use of the said products, and that the claims of the present application meet this criterion.

Claims 13-22 and 25-30 are directed to a product, tricyclic pyrazole derivatives having the structural Formula (I). Claims 1-12 are directed to a method of treating diseases

caused by and/or associated with an altered protein kinase activity. These claims, in effect, are directed to the use of a product, the product being a compound, specifically a tricyclic-pyrazole derivative, having the structural Formula I. Claims 23 and 24 are directed to a process for preparing that tricyclic-pyrazole derivative product. It is noted that Claims 27-29 are other claims defining the product, a pharmaceutical composition which includes, in addition to the tricyclic-pyrazole derivative product, at least one pharmaceutically acceptable carrier and/or diluent. Accordingly, consistent with the election and the telephone conference referred to hereinabove and 37 C.F.R. §1.475(b), applicants respectfully request that in the least the United States Patent and Trademark Office should consider the subject matter of these claims for examination herein.

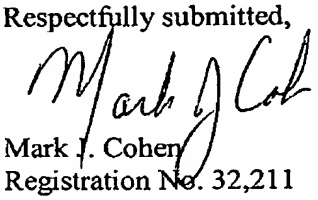
The Office Action also objects that the structural moiety common to Groups I-XIV is Formula (I). It further alleges that this structural feature is not a special technical feature, because it fails to define a contribution over the prior art U.S. Patent 4,734,430 to Le Tourneau et al.

Applicants respectfully disagree and submit that the Le Tourneau et al. disclosure differs from the present invention in that it relates to di-pyrazole derivatives for use as bronchodilators while the presently claimed compounds are protein kinase inhibitors and as such are useful for restricting the unregulated proliferation of tumor cells. Therefore, the present claimed compounds define at least a contribution over Le Tourneau.

Applicants respectfully submit that a determination to make the pending restriction requirement final must evidence the patentable distinctness of the defined fourteen Groups, one from the other, as presented by the Examiner.

In view of the foregoing comments, it is respectfully urged that the Examiner withdraw the requirement for restriction and provide an action on the merits with respect to all the claims.

Respectfully submitted,



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